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April 25, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

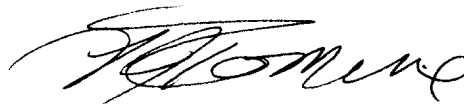
Re: Request for Expedited Clarification
PP Docket 93-253

Dear Mr. Caton:

Enclosed is an original and two copies of a letter to the Chief, Commercial Radio Division of the Wireless Telecommunications Bureau which requests clarification of the narrowband PCS rules.

Should the Commission have any questions, kindly contact the undersigned.

Very truly yours,



Terry J. Romine

Enclosures

cc: Rosalind C. Allen, Chief (Hand Delivery)
Commercial Radio Division

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Rosalind C. Allen, Esq.
Chief, Commercial Radio Division
Federal Communications Commission
Wireless Telecommunications Bureau
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: **Request for Expedited Clarification**
PP Docket 93-253

Dear Ms. Allen:

PCS Development Corporation ("PCSD"), a narrowband PCS regional licensee, hereby requests that the Commission clarify its rules concerning membership of the designated entity control groups in narrowband PCS. PCSD is in the process of raising the funds necessary to build out its nationwide PCS network and initiate service. Sloan Communications, a member of the control group, is interested in forming a limited partnership in which it would be the sole general partner and to which it would contribute its interest in PCSD. The narrowband PCS rules permit a limited partnership to be a member of the control group; however, the rules are silent as to whether such limited partners' gross revenues and/or personal net worth would be attributable for the purpose of determining whether PCSD continues to meet the criteria of a small business as set forth under Section 24.320(b) of the Commission's rules.

Sloan Communications, Inc. ("Sloan") is a member of the control group of PCSD. Sloan is controlled by Maceo K. Sloan, an African American, a minority as defined by Section 24.320(f) of the FCC's rules. Sloan and its affiliates (as defined under Section 24.320(i) of the FCC's rules) have gross revenues of under \$10 million. There are two other members of the control group which are controlled by women: Dobson Family Corporation ("Dobson") and Sullivan Family Revocable Trust

("Sullivan"). Pursuant to Section 24.320(b) and (c), PCSD is considered a small business owned by members of minority groups and/or women.

Sloan is currently in the process of structuring a limited partnership in which Sloan will be the general partner. Sloan would contribute its stock in PCSD to the partnership. As the sole general partner, Sloan will retain total control of the partnership and, therefore, the stock of PCSD. The limited partners will contribute cash, but will have no control over the partnership nor hold any controlling positions, such as a director, in either Sloan or PCSD.

This limited partnership offering is a private placement. Only persons who are either members of a minority group or women, or entities controlled by members of a minority group or women, will be solicited. Under SEC rules and regulations, such individuals or entities must have significant gross revenues or personal net worth to be a "qualifying" investor. As each limited partner may have significant revenues or personal net worth, should such revenues or net worth be required to be aggregated and attributed to PCSD, PCSD may no longer be considered a small business. Sloan requests clarification of the narrowband rules to ensure that the gross revenues/personal net worth of the limited partners and their affiliates will not be attributable to PCSD for purposes of determining its qualification as a small business under applicable FCC rules.

The narrowband PCS rules are clear that either individuals or entities may be members of a control group. See 47 C.F.R. § 24.320(h).^{1/} Accordingly, a limited partnership is not precluded from being a member of the control group. Moreover, the Commission has stated that for a partnership to qualify for designated entity status, all general partners in the applicant and its "control group" must be eligible entities.^{2/} For purpose of the rules, the FCC presumes that "all general partners in a partnership have the power to bind the partnership, and therefore have de facto control."^{3/} The

^{1/} For example, the entire control group of PCSD is comprised of entities rather than individuals. Sloan is a corporation; Dobson is a corporation; and Sullivan is a trust.

^{2/} Third Memorandum Opinion and Order and Further Notice of Proposed Rule Making (FCC 94-219), PP Docket No. 93-253, ¶62, 9 FCC Rcd ____ (1994) ("Third Memorandum Opinion and Order").

^{3/} Id.

FCC also considers limited partnership interests to be passive equity^{4/} when such partners "do not have the power to exercise control of the entity."^{5/}

Accordingly, it appears that the Commission contemplated that a general partner holding interest in the PCS applicant must meet all eligibility requirements under the narrowband PCS rules to claim designated entity status. However, neither the Commission's discussions in the Third Memorandum Opinion and Order nor the adopted rules require that the limited partners individually meet such eligibility requirements. Furthermore, the affiliation rules do not apply to the limited partners as none will have any control over PCSD^{6/}; therefore, the gross revenues or personal net worth of such limited partners would not be attributable to PCSD.

The Commission has recognized that broadband PCS will require substantial outlay of capital to establish such services in the various Major Trading Areas and Basic Trading Areas. The development of certain narrowband PCS systems, such as that being developed by PCSD, will require similar capital expenditures to implement the more advanced technologies. Accordingly, as in broadband PCS, the Commission's rules in narrowband PCS must be structured and interpreted in a manner to encourage the infusion of capital into the narrowband PCS licensees. PCSD and

^{4/} Currently, in the broadband PCS rules, the interest held in an applicant by limited partners is defined as "non-attributable equity" rather than "passive equity." 47 C.F.R. § 24.720 (j)(i)(ii). Therefore, the assets and revenues of such limited partners (even within the control group) are not considered in an applicant's eligibility to bid in the entrepreneurs' block or qualify as a designated entity. This definition is consistent with the Commission's historical treatment of limited partnership interests in a variety of contexts. See Wilner & Scheiner, 103 FCC 2d 511 (1985); Attribution of Broadcast Interests, 97 FCC 2D 997 (1984).

^{5/} Fifth Report and Order (FCC 94-178), PP Docket No. 93-253, ¶158, 9 FCC Rcd (1994).


^{6/} See 47 C.F.R. § 24.720(e).

Rosalind C. Allen, Esq.
April 25, 1995
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Sloan believe that the aforesaid interpretation is consistent with the Commission's primary policy objectives and the existing narrowband PCS rules and should be adopted by the Commission.

Respectfully submitted,

PCS Development Corporation

By: 
Elizabeth R. Sachs
Terry J. Romine